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Attorney General of Hawaii

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Department of Attorney
General, State of Hawaii
Labor Division
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Honolulu, Hawaii 96813
Telephone: 586-1450

Attorneys for Complainant NELSON B. BEFITEL,
Director of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2003-5
)	(Inspection No. 305306102)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Complainant,)	
)	
vs.)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
DEPARTMENT OF PARKS AND)	AND ORDER
RECREATION, City and County of)	
Honolulu,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent Department of Parks and Recreation, City and County of Honolulu ("Respondent")
having reached a full and complete settlement of the above-captioned contested case presently
pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about February 19, 2003 through February 20, 2003, the Director, by and
through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected

Respondent's workplace located at 41-1055 Kalaniana'ole Highway, Waimanalo, Hawaii 96795.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on March 24, 2003 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,800.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 41-1055 Kalaniana'ole Highway, Waimanalo, Hawaii 96795.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated the violations designated in the Citation as Citation 1, Items 2a and 2b, in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows:
 - a. Citation 1, Item 2a, 29 CFR 1910.1200(g)(11) [Refer to Chapter 12-203.1, HAR] and Citation 1, Item 2b, 29 CFR 1910.1200(g)(8) [Refer to Chapter 12-203.1,

HAR] are affirmed but their characterizations are amended from serious to other than serious.

b. Citation 1, Item 1, 29 CFR 1910.1200(f)(5) [Refer to Chapter 12-203.1, HAR]; Citation 1, Item 3a, 29 CFR 1910.1200(h)(1) [Refer to Chapter 12-203.1, HAR]; Citation 1, Item 3b, 29 CFR 1910.1200(h)(3)(iii) [Refer to Chapter 12-203.1 HAR]; and Citation 1, Item 4, 29 CFR 1910.132(d)(2) [Refer to Chapter 12-64.1, HAR] are deleted.

6. The Director reduces the aggregate penalty from \$1,800.00 to \$150.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

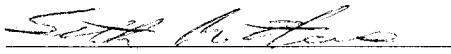
8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

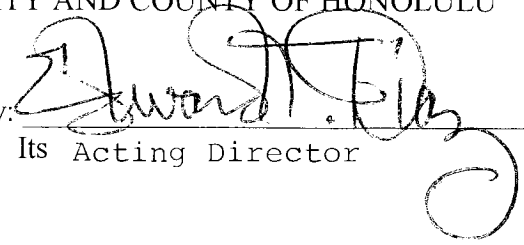
10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, October 9, 2003.

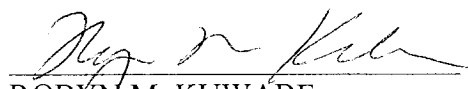
APPROVED AS TO FORM:


SETH R. HARRIS
Attorney for Respondent

DEPARTMENT OF PARKS AND RECREATION,
CITY AND COUNTY OF HONOLULU

By: 
Its Acting Director

APPROVED AS TO FORM:



ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



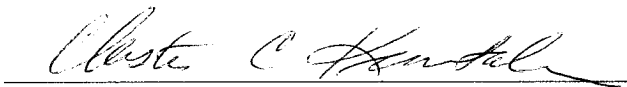
NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

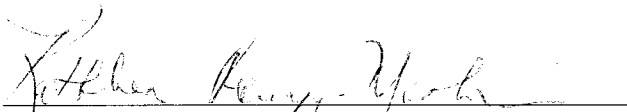
ORDER NO. 70



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7002 2030 0001 3718 6037

Citation and Notification of Penalty

To:
C&C-Honolulu Parks Department
and its successors
1000 Uluohia St #309
Kapolei, HI 96707

Inspection Number: 305306102
Inspection Date(s): 02/19/2003- 02/20/2003
Issuance Date: 03/24/2003
OSHC ID: U3486
Optional Report No.: 17-03

Inspection Site:
41-1055 Kalanianaʻole Hwy
Waimanalo, HI 96795

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
830 PUNCHBOWL STREET
HONOLULU, HI 96813

C&C-Honolulu Parks Department
1000 Uluohia St #309
Kapolei, HI 96707

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 03/24/2003. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305306102

Inspection Dates: 02/19/2003 - 02/20/2003

Issuance Date: 03/24/2003



Citation and Notification of Penalty

Company Name: C&C-Honolulu Parks Department
Inspection Site: 41-1055 Kalaniana'ole Hwy, Waimanalo, HI 96795

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.1200(f)(5) [Refer to Chapter 12-203.1, HAR] It was not ensured that each container of hazardous chemical in the workplace is labeled, tagged or marked; i.e., spray bottle containing graffiti remover EM-7 liquid used by two or more employees.

Location : Kaiona Beach Park

Date By Which Violation Must be Abated:
Penalty:

04/28/2003
\$ 450.00

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1910.1200 (g)(11) [Refer to Chapter 12-203.1, HAR] Material Safety Data Sheets were not made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.1200 (e).

Location: Kaiona Beach Park

Date By Which Violation Must be Abated:
Penalty:

04/28/2003
\$ 450.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305306102

Inspection Dates: 02/19/2003 - 02/20/2003

Issuance Date: 03/24/2003



Citation and Notification of Penalty

Company Name: C&C-Honolulu Parks Department
Inspection Site: 41-1055 Kalaniana'ole Hwy, Waimanalo, HI 96795

Citation 1 Item 2b Type of Violation: Serious

29 CFR 1910.1200(g)(8) [Refer to Chapter 12-203.1, HAR] Copies of the required material safety data sheets for each hazardous chemical were not maintained and ensured that they are readily accessible during each work shift to employees when they are in the work area(s); i.e., no MSDS for EM-7 Liquid graffiti remover was available for review during the inspection.

Location: Kaiona Beach Park

Date By Which Violation Must be Abated: 04/28/2003

The alleged violations below (3a & 3b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 3a Type of Violation: Serious

29 CFR 1910.1200(h)(1) [Refer to Chapter 12-203.1, HAR] Effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new physical or health hazard is introduced into their work area was not provided to the employees; i.e., groundskeepers were not able to identify the health hazards associated with the use of EM-7 liquid graffiti remover.

Location: Kaiona Beach Park

Date By Which Violation Must be Abated: 04/28/2003
Penalty: \$ 450.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305306102

Inspection Dates: 02/19/2003 - 02/20/2003

Issuance Date: 03/24/2003



Citation and Notification of Penalty

Company Name: C&C-Honolulu Parks Department
Inspection Site: 41-1055 Kalaniana'ole Hwy, Waimanalo, HI 96795

Citation 1 Item 3b Type of Violation: Serious

29 CFR 1910.1200(h)(3)(iii) [Refer to Chapter 12-203.1, HAR] Employees' training did not include the measures employees can take to protect themselves from the physical and health hazards of the chemical in the work area, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

Location: Kaiona Beach Park

Date By Which Violation Must be Abated:

04/28/2003

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 305306102

Inspection Dates: 02/19/2003 - 02/20/2003

Issuance Date: 03/24/2003



Citation and Notification of Penalty

Company Name: C&C-Honolulu Parks Department

Inspection Site: 41-1055 Kalanianaʻole Hwy, Waimanalo, HI 96795

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.132(d)(2) [Refer to Chapter 12-64.1, HAR]

It was not verified that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment; i.e., written hazard assessment evaluation was not available for review during the inspection.

Location: Kaiona Beach Park

Date By Which Violation Must be Abated:

04/28/2003

Penalty:

\$ 450.00

A handwritten signature in cursive script, reading "Nelson B. Befitel".

NELSON B. BEFITEL
DIRECTOR

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: C&C-Honolulu Parks Department
Inspection Site: 41-1055 Kalaniana'ole Hwy, Waimanalo, HI 96795
Issuance Date: 03/24/2003

Summary of Penalties for Inspection Number 305306102

Citation 1, Serious	= \$ 1,800.00
TOTAL PENALTIES	= \$ 1,800.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$7.50 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **305306102**

Mr. William Balfour
Director of Parks & Recreation
C&C-Honolulu Parks Department
1000 Uluohia St, #309
Kapolei, HI 96707

2. Article Number
(Transfer from service label)

7002 2030 0001 3718 6037

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-250

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Ruthleen Yogi

C. Date of Delivery

3/27/05

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Health

Postage

0.83

Certified Fee

2.30

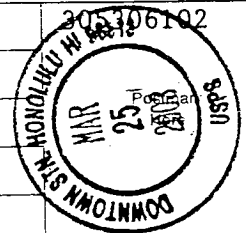
Return Receipt Fee
(Endorsement Required)

1.75

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 4.88



Sent To

C&C-Honolulu Parks Department

Street, Apt. No.,
or PO Box No.

1000 Uluohia St, #309

City, State, ZIP+4

Kapolei, HI 96707

PS Form 3800, June 2002

See Reverse for Instructions

7002 2030 0001 3718 6037